

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2013020371

ORDER GRANTING PARTIAL
MOTION TO DISMISS

On February 08, 2013, Student filed a Request for Due Process Hearing (complaint), naming Irvine Unified School District (District) as the respondent. A corrected complaint was filed by Student on February 12, 2013.

On February 20, 2013, District filed a Partial Motion to Dismiss, alleging that Student has raised claims in the complaint that are not under the jurisdiction of the Office of Administrative Hearings (OAH).

OAH received no response to the Partial Motion to Dismiss from Student.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to entertain claims based on section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) (Section 504) section 1983 of title 42 United States Code, No Child Left Behind (NCLB) and state civil rights statutes.

DISCUSSION

In all four of the Student's issues identified in the due process complaint, Student "...contends that the District violated IDEA, Section 504 of the Rehabilitation Act of 1973, the civil rights act under 42 U.S.C. § 1983, NCLB and all related state law...".

To the extent that the Student's complaint alleges violations of Section 504, 42 U.S.C. §1983, NCLB or state civil rights statutes, the claims are dismissed. The claims under the IDEA and related state law remain.

ORDER

District's Motion to Dismiss is granted as to Issues concerning alleged violations of Section 504, 42 U.S.C. §1983, NCLB or state civil rights statutes. The matter will proceed as scheduled as to the alleged IDEA and related state law violations.

IT IS SO ORDERED.

Dated: February 26, 2013

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings